
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018

PART 3

Amendments to the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008

8.—(1) The Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(1) are amended in accordance with this Part.

(2) For the purposes of this Part, “the 2006 Act”, means the Companies Act 2006(2).

Amendment of regulation 4 (scheme of Part 15 as applied to LLPs)

9. In regulation 4, in the modified version of section 380(1) of the 2006 Act for “and auditor’s reports”, substitute “, auditor’s reports and energy and carbon reports”.

New Part 5A

10. After regulation 12A (strategic report), insert—

“PART 5A

ENERGY AND CARBON REPORT

Energy and carbon report

12B. Sections 415, 415A, 416 and 419 apply to LLPs, modified so that they read as follows—

“Duty to prepare energy and carbon report

415.—(1) Unless the LLP is exempted under section 415A(1) or (4), and subject to subsection (4), the members of an LLP must prepare an energy and carbon report for each financial year of the LLP.

(2) For a financial year in which—

- (a) the LLP is a parent LLP, and
- (b) the members of the LLP prepare group accounts,

(1) S.I. 2008/1911 is amended by S.I. 2009/1804, 2012/2301, 2012/1439, 2013/472, 2014/1815, 2016/575, 2017/80, 2017/1164. There are other amendments which are not relevant.

(2) 2006 c.46. There are amendments to the Act which are not relevant.

the energy and carbon report must be a consolidated report (“a group energy and carbon report”) relating to the undertakings included in the consolidation.

(3) A group energy and carbon report may, where appropriate, give greater emphasis to the matters that are significant to the undertakings included in the consolidation, taken as a whole.

(4) Subsection (1) does not apply if—

- (a) the LLP is a subsidiary undertaking at the end of the financial year;
- (b) the LLP is included in the group report of a parent undertaking;
- (c) the group report is prepared for a financial year of the parent undertaking that ends at the same time as, or before the end of, the LLP’s financial year; and—

- (i) if the group report is a group energy and carbon report, it complies with Part 7A of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008⁽³⁾ as applied and modified by regulation 12B of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 other than in reliance on paragraph 20D(7)(b); or

- (ii) if the group report is a group directors’ report—

- (aa) of a quoted company, it complies with Part 7 of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 other than in reliance on paragraph 15(5)(b); or

- (bb) of an unquoted company it complies with Part 7A of Schedule 7 to those Regulations other than in reliance on paragraph 20D(7)(b).

(5) For the purpose of subsection (4)—

“group directors’ report” means a report prepared in accordance with section 415(2);

“quoted company” and “unquoted company” have the meanings given in section 385.

(6) In the case of failure to comply with the requirement to prepare an energy and carbon report, an offence is committed by every person who—

- (a) was a member of the LLP immediately before the end of the period for filing accounts and reports for the financial year in question; and
- (b) failed to take all reasonable steps for securing compliance with that requirement.

(7) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;

- (b) on summary conviction—

- (i) in England and Wales, to a fine⁽⁴⁾;

(3) [S.I. 2008/410](#) is amended by [S.I. 2013/1970](#), [2016/575](#), [2018/xxxx](#) and by Part 2 of these Regulations. There are other amendments which are not relevant.

(4) Section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ([c.10](#)) applies to section 415(5)(b) of the Companies Act 2006 ([c.46](#)) to provide that the offence is punishable by a fine of any amount.

- (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

Exemption to duty to prepare energy and carbon report

415A.—(1) Unless the LLP is a parent LLP, an LLP is exempted under this subsection—

- (a) in relation to its first financial year if the qualifying conditions in subsection (2) are met in that year;
- (b) in relation to a subsequent financial year—
 - (i) if the qualifying conditions are met in that year and were also met in relation to the preceding financial year;
 - (ii) if—
 - (aa) the qualifying conditions are met in that year, and
 - (bb) the LLP was exempted in relation to the preceding financial year; or
 - (iii) if—
 - (aa) the qualifying conditions were met in the preceding financial year, and
 - (bb) the LLP was exempted in relation to the preceding financial year.

(2) The qualifying conditions referred to in subsection (1) are met by an LLP in a year in which it satisfies two or more of the following requirements—

| | | |
|---|---------------------|---------------------------|
| 1 | Turnover | not more than £36 million |
| 2 | Balance sheet total | not more than £18 million |
| 3 | Number of employees | not more than 250 |

- (3) For the purposes of subsection (2)—
 - (a) for a period that is an LLP's financial year but not in fact a year the figure for turnover must be proportionately adjusted;
 - (b) the balance sheet total means the aggregate of the amounts shown as assets in the LLP's balance sheet;
 - (c) the number of employees means the average number of persons employed by the LLP in the year, determined as follows—
 - (i) find for each month in the financial year the number of persons employed under contracts of service by the LLP in that month (whether throughout the month or not),
 - (ii) add together the monthly totals, and
 - (iii) divide by the number of months in the financial year.
- (4) A parent LLP is exempted under this subsection—
 - (a) in relation to the parent LLP's first financial year if the qualifying conditions in subsection (5) are met in that year by the group headed by it;
 - (b) in relation to a subsequent financial year of the parent LLP—

- (i) if the qualifying conditions are met in that year and the preceding financial year by the group headed by the parent LLP;
- (ii) if—
 - (aa) the qualifying conditions are met in that year by the group, and
 - (bb) the parent LLP was exempted in relation to the preceding financial year; or
- (iii) if—
 - (aa) the qualifying conditions were met in the preceding financial year by the group, and
 - (bb) the parent LLP was exempted in relation to the preceding financial year.

(5) The qualifying conditions referred to in subsection (4) are met by a group in a year in which it satisfies two or more of the following requirements—

| | | |
|---|-------------------------------|--|
| 1 | Aggregate turnover | not more than £36 million net (or £43.2 million gross) |
| 2 | Aggregate balance sheet total | not more than £18 million net (or £21.6 million gross) |
| 3 | Aggregate number of employees | not more than 250 |

(6) For the purposes of subsection (5), the aggregate figures are to be ascertained by aggregating the relevant figures determined in accordance with subsections (1) to (3) for each member of the group.

(7) In relation to the aggregate figures for turnover and balance sheet total—

(a) “net” means after any set-offs and other adjustments made to eliminate group transactions—

- (i) in the case of non-IAS accounts, in accordance with Schedule 3 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008⁽⁵⁾;
- (ii) in the case of IAS accounts, in accordance with international accounting standards; and

(b) “gross” means without those set-offs and other adjustments.

(8) An LLP may satisfy any requirements in subsection (5) on the basis of either the net or the gross figure.

(9) For the purposes of subsection (5)—

(a) the figures for each subsidiary undertaking must be those included in its individual accounts for the relevant financial year, that is—

- (i) if its financial year ends with that of the parent LLP, that financial year, and
- (ii) if not, its financial year ending last before the end of the financial year of the parent LLP; or

- (b) if those figures cannot be obtained without disproportionate expense or undue delay, the latest available figures may be taken.

Contents of energy and carbon report

416.—(1) The energy and carbon report for a financial year must state—

- (a) the names of the persons who, at any time during the financial year, were members of the LLP; and
- (b) the name of the designated member signing the report in accordance with section 419.

(2) Regulation 10(1) and Part 7A of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 apply to LLPs with the following modifications—

- (a) in regulation 10(1)—
 - (i) for “directors of a company”, substitute “members of an LLP”;
 - (ii) for “directors’ report”, substitute “energy and carbon report”;
 - (iii) for “Schedule 7”, substitute “Part 7A of Schedule 7”;
- (b) in Part 7A—
 - (i) in the heading, omit “by unquoted companies”;
 - (ii) for paragraph 20A(1), substitute “This Part of this Schedule applies to the energy and carbon report for a financial year.”;
 - (iii) omit paragraphs 20A(2) and (3), 20B and 20C;
 - (iv) in paragraphs 20D, 20E(1) and 20E(3), for each reference to “company” except on the third and fourth occasion it appears in paragraph 20E(1) and where it appears in paragraphs 20E(3)(a) and (b), substitute “LLP”;
 - (v) in paragraphs 20D and 20G, for each reference to “company’s”, substitute “LLP’s”;
 - (vi) in paragraphs 20D, 20F, 20G, 20H, 20I and 20J, for each reference to “directors’ report”, substitute “energy and carbon report”;
 - (vii) in paragraph 20D(7)(b), for the reference to “directors”, substitute “members”;
 - (viii) in paragraph 20E(1), for the reference to “group directors’ report”, substitute “group energy and carbon report”;
 - (ix) in paragraphs 20E(2) and (3)(a) and 20K, for each reference to “Part 7 of this Schedule”, substitute “Part 7 of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008”;
 - (x) in paragraph 20E(3)(b), for the reference to “this Part of this Schedule”, substitute “Part 7A of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008”;
 - (xi) for paragraph 20E(4), substitute “For the purpose of this paragraph, “quoted company” and “unquoted company” have the meanings given in section 385.”.

Approval and signing of energy and carbon report

419.—(1) The energy and carbon report must be approved by the members and signed on behalf of all the members by a designated member.

(2) If an energy and carbon report is approved that does not comply with the requirements of this Act, every member who—

- (a) knew that it did not comply, or was reckless as to whether it complied, and
- (b) failed to take reasonable steps to secure compliance with those requirements or, as the case may be, to prevent the report from being approved,

commits an offence.

(3) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction—
 - (i) in England and Wales, to a fine⁽⁶⁾;
 - (ii) in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.”.

Amendment of Part 6 (publication of accounts and auditor's report)

11. In Part 6, in the heading, for “and auditor's report”, substitute “, auditor's report and energy and carbon report”.

Amendment of regulation 13 (publication of accounts and auditors' report)

12.—(1) Regulation 13 is amended as follows.

(2) In the heading, for “and auditor's report”, substitute “, auditor's report and energy and carbon report”.

(3) In the modified version of section 423 of the 2006 Act—

- (a) in the heading, after “auditor's report”, insert “and energy and carbon report”;
- (b) in subsection (1)—
 - (i) after “auditor's report”, where it first appears, insert “and energy and carbon report (if any)”;
 - (ii) for the words “and the auditor's report on them”, substitute “, the auditor's report on them and the energy and carbon report”; and
 - (iii) after “accounts”, in the fourth place in which it appears, insert “and the energy and carbon report (if any)”.

Amendment of regulation 14 (default in sending out copies of accounts and auditor's report)

13.—(1) Regulation 14 is amended as follows.

(2) In the heading, for “and auditor's report”, substitute “, auditor's report and energy and carbon report”.

⁽⁶⁾ Section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) applies to section 419(4)(b) of the Companies Act 2006 (c.46) to provide that the offence is punishable by a fine of any amount.

(3) In the modified version of section 425 of the 2006 Act, in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

Amendment of regulation 15 (right of member or debenture holder to copies of accounts and auditor’s report)

14.—(1) Regulation 15 is amended as follows.

(2) In the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

(3) In the modified version of section 431 of the 2006 Act—

- (a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;
- (b) in subsection (1)—
 - (i) in paragraph (a), omit “and”;
 - (ii) at the end of paragraph (b), insert “, and”;
 - (iii) after paragraph (b), insert—
 - “(c) the last energy and carbon report (if any).”.

Amendment of regulation 16 (requirements in connection with publication of accounts and auditor’s report)

15.—(1) Regulation 16 is amended as follows.

(2) In the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

(3) In the modified version of section 433 of the 2006 Act—

- (a) in the heading, after “accounts”, insert “and energy and carbon report”;
- (b) in subsection (1), after “sheet”, insert “and energy and carbon report”.

(4) In the modified version of section 436 of the 2006 Act—

- (a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;
- (b) in subsection (1), after “accounts” where it first appears, insert “and energy and carbon report”.

Amendment of Part 7 (filing of accounts and auditor’s report)

16. In Part 7, in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

Amendment of regulation 17 (duty to file accounts and reports)

17.—(1) Regulation 17 is amended as follows.

(2) In the modified version of section 441(1) of the 2006 Act, after “auditor’s report”, insert “and energy and carbon report”.

(3) In the modified version of section 442 of the 2006 Act—

- (a) in the heading, after “accounts”, insert “and reports”;
- (b) in subsection (1)—

(i) for “and the auditor’s report”, substitute “, the auditor’s report and the energy and carbon report”;

(ii) for “that report”, substitute “those reports”.

(4) In the modified version of section 443(1) of the 2006 Act, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

Amendment of regulation 19 (filing obligations of large LLPs)

18. In regulation 19, in the modified version of section 446 of the 2006 Act, after subsection (2), insert—

“(2A) The designated members must also deliver to the registrar a copy of the energy and carbon report for each financial year of the LLP, unless the members of the LLP are, by virtue of sections 415(4) or 415A, not under a duty to prepare an energy and carbon report.”

Amendment of regulation 22 (failure to file accounts and auditor’s report)

19.—(1) Regulation 22 is amended as follows.

(2) In the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”.

(3) In the modified version of section 451 of the 2006 Act—

(a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;

(b) in subsection (1), for the words from “year” to “that report”, substitute “year, the auditor’s report on those accounts and the energy and carbon report before the end of the period for filing those accounts and reports”.

(4) In the modified version of section 452 of the 2006 Act—

(a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;

(b) in subsection (1)(a)—

(i) after “auditor’s report”, where it first appears, insert “and energy and carbon report”;

(ii) for the words from “year” to “that report”, substitute “year, the auditor’s report on those accounts and the energy and carbon report before the end of the period for filing those accounts and reports”.

(5) In the modified version of section 453 of the 2006 Act—

(a) in the heading, for “and auditor’s report”, substitute “, auditor’s report and energy and carbon report”;

(b) in subsection (1), for the words from “year” to “that report”, substitute “year, the auditor’s report on those accounts and the energy and carbon report before the end of the period for filing those accounts and reports”.

Amendment of Part 8 (revision of defective accounts)

20. In Part 8, in the heading, after “accounts”, insert “or energy and carbon report”.

Amendment of regulation 23 (revision of defective accounts)

21.—(1) Regulation 23 is amended as follows.

(2) In the heading, after “accounts”, insert “or energy and carbon report”.

- (3) In the modified version of section 454 of the 2006 Act—
- (a) for subsection (1), substitute—

“(1) If it appears to the members of an LLP that the LLP’s annual accounts or the LLP’s energy and carbon report did not comply with the requirements of this Act, they may prepare revised accounts or a revised energy and carbon report.”;
 - (b) in subsection (2), after “previous accounts”, in both places in which it appears, insert “or energy and carbon report”;
 - (c) in subsection (3)(a), omit “and”;
 - (d) after subsection (3)(b), insert—
 - “(c) references to a directors’ report include references to an energy and carbon report;
 - (d) references to a revised directors’ report include references to revised energy and carbon report except for the purposes of regulation 7;
 - (e) references to the date on which the original directors’ report was approved by the board of directors include references to the date on which the original energy and carbon report was approved by the members of an LLP;
 - (f) references to the date on which a revised directors’ report is approved by the board of directors include references to the date on which a revised energy and carbon report is approved by the members of an LLP; and
 - (g) the reference in regulation 5 to section 419(3) and (4) includes a reference to section 419(2) and (3) as applied and modified by regulation 12B.”.
- (4) In the modified version of section 455 of the 2006 Act—
- (a) in the heading, after “accounts”, insert “or energy and carbon report”;
 - (b) in subsection (1)—
 - (i) after “annual accounts”, insert “or energy and carbon report”;
 - (ii) after “the accounts”, insert “or report”;
 - (c) in subsection (3)—
 - (i) after “accounts”, where it first appears, insert “or energy and carbon report”;
 - (ii) after “accounts”, in the second place in which it appears, insert “or a revised energy and carbon report”;
 - (d) in subsection (4), after “accounts”, in both places in which it appears, insert “or report”;
 - (e) in subsection (5)—
 - (i) after “accounts”, where it first appears, insert “and revised energy and carbon reports”;
 - (ii) after “accounts”, in the second and third places in which it appears, insert “or reports”.
- (5) In the modified version of section 456 of the 2006 Act—
- (a) in the heading, after “accounts”, insert “or energy and carbon report”;
 - (b) in subsection (1)—
 - (i) after “comply”, insert “, or an energy and carbon report does not comply,”;
 - (ii) after “accounts” in the second place in which it appears, insert “or a revised report”;
 - (c) in subsection (3)—
 - (i) omit “and” where it first appears;

- (ii) after (a) insert—
 - “(aa) the revision of any energy and carbon report, and”;
- (d) after subsection (3), insert—
 - “(3A) If the court orders the preparation of a revised energy and carbon report, it may give directions as to—
 - (a) the taking of steps by the members to bring the making of the order to the notice of persons likely to rely on the previous report, and
 - (b) such other matters as the court thinks fit.”;
- (e) in subsection (4) and (5)—
 - (i) after “accounts”, on each occasion it appears except where it appears at the end of subsection (4)(b), insert “or report”;
 - (ii) after “accounts” where it appears at the end of subsection (4)(b), insert “or a revised report”;
- (f) in subsection (7)—
 - (i) after “accounts”, where it first appears, insert “and revised energy and carbon reports”;
 - (ii) after “accounts”, in the second and third places in which it appears, insert “or reports”.

Amendment of regulation 24 (disclosure of information)

22. In regulation 24, in the modified version of section 459 of the 2006 Act, in subsection (1), after “accounts”, insert “or energy and carbon report”.

Amendment of Part 9 (accounts: supplementary provisions)

23. In Part 9, in the heading, after “accounts”, insert “and reports”.

Amendment of regulation 24A

- 24.** In regulation 24A, in the modified version of section 463 of the 2006 Act—
- (a) in the heading, after “report”, insert “or energy and carbon report”;
 - (b) in subsection (1), after “report”, in both places in which it appears, insert “or energy and carbon report”.

Amendment of regulation 59 (review)

- 25.**—(1) Regulation 59 is amended as follows.
- (2) In paragraph (1), for sub-paragraph (a), substitute —
- “(a) carry out a review, respectively, of the regulatory provision contained in these Regulations to which amendments have been made by—
 - (i) Part 2 of the Limited Liability Partnerships, Partnerships and Groups (Accounts and Audit) Regulations 2016(7) (“the 2016 Regulations”),
 - (ii) Schedule 3 to the Statutory Auditors Regulations 2017(8), and

(7) S.I. 2016/575.

(8) S.I. 2017/1164.

(iii) Part 3 of the Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 ("the 2018 Regulations"),".

(3) In paragraph (1)(b)—

(a) for "the review", substitute "each review";

(b) before "report", insert "separate".

(4) For paragraph (3), substitute—

"(3) The first report under—

(a) paragraph (1)(a)(i) and (ii) must be published before the end of the period of 5 years beginning with the date on which the 2016 Regulations come into force;

(b) paragraph (1)(a)(iii) must be published before the end of the period of 5 years beginning with the date on which the 2018 Regulations come into force."